



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diversified Design Consultants, Ltd.--
File: Reconsideration
B-224980.2
Date: November 13, 1986

DIGEST

Protest is untimely where not filed within 10 days after protester knew the basis of its protest. Protester's apparent lack of knowledge of the 10-day filing requirement is not a defense to dismissal of its protest as untimely since protesters are held to have constructive notice of GAO Bid Protest Regulations through their publication in the Federal Register.

DECISION

Diversified Design Consultants, Ltd. (Diversified) requests reconsideration of our dismissal of its protest against the award of a contract to the low bidder under invitation for bids (IFB) No. 4130 issued by the Department of the Interior (Interior). Diversified, notwithstanding its status as second low bidder, had protested that award should have been made to the firm as the incumbent contractor on the basis of its past experience and expertise in performing the solicited services. We dismissed Diversified's protest as untimely since it was not filed within 10 working days after Diversified stated it learned of the award. 4 C.F.R. § 21.2(a)(2) (1986).

On reconsideration, Diversified essentially argues that it could not file its protest until it learned of the filing requirements at GAO and that it diligently pursued this filing information with the contracting agency and subsequently with GAO. The firm thus maintains that its protest mailed 7 working days after receiving a copy of our Bid Protest Regulations should be considered timely.

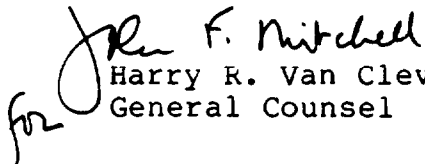
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Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), require that protests be filed with our Office not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. Here, the protester knew its basis of protest on September 12, 1986, when it learned of the award decision. Therefore, Diversified's protest filed with this Office on October 15, 1986, more than 10 working days later, is untimely. While the protester apparently was unaware of the 10-day filing requirement until it received a copy of our regulations, the protester's lack of actual knowledge of our regulations and the procuring officials' alleged inability to supply information regarding the filing of bid protests is not a defense to a dismissal of its protest as untimely. Our regulations are published in the Federal Register and protesters are charged with constructive notice of their contents. A&A Transfer & Storage, Inc., B-221735, Feb. 4, 1986, 86-1 C.P.D. ¶ 128; B&B Boat Building Inc.--Reconsideration, B-220852,4, Jan. 22, 1986, 86-1 C.P.D. ¶ 69.

In any event, from the time Diversified had actual knowledge of the filing requirements, receipt of our regulations on September 26, 1986, the protest was untimely as it was filed (received) more than 10 days thereafter.

As to the merits of the protest, we note that since this was a sealed bid procurement, award was required to be made to the low responsive and responsible bidder regardless of the fact that Diversified was the incumbent contractor performing in a satisfactory manner.

Our prior dismissal is affirmed.

for  F. Mitchell
Harry R. Van Cleve
General Counsel